IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.275 OF 2001

1. Smt Renuka Devendrasingh
Parihar and Ors. .....Petitioners.

V/s

1. State of Maharashtra
and Ors. .....Respondents.

Mr. Prakash D. Naik for the petitioners.
Ms. S.U. Gajre, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 19th April, 2006

P.C.

1. Heard the learned Counsel for the petitioners and the learned APP for the State.

2. This petition is filed for quashing the complaint which is filed by the complainant against the present petitioners on 2/4/1999 in which it is alleged by him that four and half months prior to the filing of the complaint, the petitioners had not made payment of the goods which he had delivered to them and had further threatened him of dire consequences if the demand is made by him.

3. Initially, notice was issued and this Court had directed that the complainant should be added as party respondent. However, though notice has been served, none appeared on behalf of the complainant.

4. The law on the point of quashing the police case or a private complaint under section 482 of the Criminal Procedure Code is quite well settled. The Supreme Court has held that, after reading the complainant as a whole and accepting the averments made in the complaint at their face value if no offence is made out, the complaint is liable to be quashed by the High Court by exercising its inherent jurisdiction as vested in it under section 482 of the Criminal Procedure Code for the purpose of preventing the abuse of the process of law. The Supreme Court in the case of Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others reported in 1998 SC 128 has observed in para 28 as under:-

> "28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set

into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording the preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

5. A perusal of the complaint discloses that the essential allegation which is made by the complainant against the present petitioners is that he had supplied certain material to the petitioners and part-payment was made by the petitioners and certain

goods were returned to the complainant. It is alleged that when he had demanded the balance amount from the complainant, he was threatened that he would be assaulted if the demand is made again. It is pertinent to note that this complaint is filed after almost four and half months. The incident which is alleged to have taken place is dated 13/11/1998 and the complaint is filed on 2/4/1999. The petitioners have also annexed a receipt which is given by the complainant in which he has acknowledged having received the amount mentioned in the said receipt towards the full and final payment for the total supply of goods and clothing made to Pinewoods High School at Panchgani and that no dues or payments of any nature is due towards the School. The complainant has not controverted the receipt or stated that the receipt is forged or fabricated.

6. Considering these facts, in my view, the averments made in the complaint disclose that the dispute essentially is in respect of delivery of goods which are made and nonpayment by the petitioners against the supply of the said goods to the complainant. The dispute clearly is of civil nature and, therefore, no case of cheating is made out as alleged by the complainant.

7. In the result the the Criminal Writ Petition is allowed and the complaint filed by the complainant dated 2/4/1999 which was lodged at Panchgani Police Station is quashed and set aside. The criminal case No.10 of 1999 which is filed by respondent No.2 in the Court of Judicial Magistrate First Class at Wai, District Satara is also quashed and set aside. Rule is made absolute accordingly in the above terms.

8. Criminal Writ Petition is disposed of.

V.M. KANADE, J.